Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	§	
	§	GN Docket No. 13-5
Technology Policy Task Force Potential	§	
Trials	§	
	§	

COMMENTS OF TEXALTEL

TEXALTEL submits these comments in response to the Federal Communications Commission's ("Commission") Technology Transitions Policy Task Force ("Task Force") request for comments on potential technology trials[1]

Introduction

TEXALTEL is a trade association of competitive telecommunications providers that do business in Texas. TEXALTEL was formed in 1982 as an association of long distance providers, but today its members have a wide array of business plans and provide a wide array of telecommunications, internet and other services.

TEXALTEL applauds the Task Force's attempt to fully flesh out and understand what parameters will be necessary to conduct a full IP technology trial while simultaneously protecting the competitive wholesale environment through its thorough and detailed request for comments on potential technology trials. TEXALTEL focuses its comments on the specific issues it believes to be the most critical to, not only maintain, but promote healthy competition.

[1] *Task Force Related ex parte*; GN Docket No. 13-5; Technology Transitions Policy Task Force Seeks Comment on Potential Trials; (rel. May 10, 2013)

Comments

The transition to VOIP is Evolution, not Revolution. This means that change in the telecommunications industry is constant and ongoing. Transition to VOIP began over twenty years ago with ATM technologies and has progressed more recently with various Internet Protocols and Voice over Internet Protocols. Change will continue as IP and VOIP standards, hardware, and applications progress. Suggesting that VOIP is some revolutionary technology that "changes everything", and to imply that it is the only major change in the recent past or near term future is extremely short sighted.

TEXALTEL also observes that the Federal Telecommunications Act (FTA), the Commission's interconnection rules, and thousands of arbitrations and court decisions require rulings that are technology neutral; to develop principals as to how ILECs, CLECs, wireless and other providers must cooperate, and compensate for costs in a way that gives the industry strong direction as technologies and networks constantly evolve. Regulations have, and will continue to, evolve with technology. That the public has been well served by a high level understanding of expectations of all participants indicates how regulators must proceed in the future.

The FTA is now approaching twenty years in existence. Much has been learned, and the industry has evolved to a framework of law, rules, arbitration decisions and court decisions that gives each participant a relatively stable platform wherein its costs, obligations and expectations of other industry participants are fairly predictable. Upon this stability, plans can be developed and implemented with a decent level of business certainty. Competitors can focus their resources on development of new technologies and applications and on providing the best service and value to the consumer rather than seeking out artificial market niches created by poor regulation or having to devote resources to overcome roadblocks created by those with monopoly and/or market power.

Suggestions that all of our history and law laying the ground rules for competition should be abandoned and that we should "start over" are, TEXALTEL believes, self-serving suggestions from a group who simply do not like that the present rules prevent them from exerting market power. While some ILECs have suggested "new wires, new rules", analysis of their proposals equates to "new wires, no rules" as they recognize that if present rules are abandoned, they have tremendous opportunities to write new rules that favor them over a healthy competitive environment. TEXALTEL urges the Task Force begin with the 251/252 "platform" that we have in place today. Careful examination will show that most of the law, rules and precedents that exist today are directly and relevantly applicable to interconnection of VOIP technologies. This inquiry can then focus on what tweaks and changes to the implementation of present interconnection philosophies as they are applied to VOIP technologies.

TEXALTEL also notes that this inquiry includes some issues that are distinctly separate. While necessary to be addressed, it is important to keep a good mental note as to which family of issues is in focus. "Interconnection", in its narrower definition, is the connection of networks so that customers of any network can communicate with customers of any other networks. Technicians in the old world would call this "trunk side" interconnection, which is the provision of connections between switches, routers and networks of various providers that allow calls and data to pass. The other issues, primarily those of if/how/when ILECs might be permitted to abandon wired networks and to provide service via wireless networks, are their own separate family of issues that do not belong in a docket dealing with "interconnection".

1. *IP Interconnection Should Move Forward Under section 251 and 252 of the Federal Telecommunications Act.*

The Task Force states in its request for comments that it is considering conducting the TDM-to-IP transition trail without the backstop of 251 and 252 regulatory obligations and asks if a second trial should be conducted with regulatory parameters in place. First, there is always a framework to proceeding without rules. Nearly all interconnection rules today allow parties to enter into "commercial agreements" that can operate very differently from the 251/252 frameworks. So there is no need to focus on a "no rules" option. That option exists, and is often a good test of how necessary 251/252 rules are, and how well they work when one looks at the success, or lack thereof, of commercial agreements. What the industry knows is that these agreements can be functional when between parties of approximately equal market power, scope, scale and resources. But as long as we are in an environment where a large incumbent expects to experience loss of retail market share whenever it enters into a wholesale contract, we will continue to have an environment where "shotgun marriage" is the only workable answer, and regulators must continue to hold the shotgun.

TEXALTEL suggests that the task force should focus its attention on 251/252 rules and on what changes, if any, are necessary in the context of the implementation details (not the policy determinations). Without the full protection of the FTA, specifically Section 251 and 252 interconnection obligations, the "no rules" suggested by ILECs will relegate smaller competitors to the markets that the ILECs are willing to let them participate in, and under conditions dictated by the ILECs. Trials inevitably take on a life of their own and are rarely reversed or significantly modified. The realities are that the trial is simply the first step into the full transition to an IP-based network and it would be disastrous for the competitive market to move forward without fully and fairly addressing IP interconnection requirements and applying the current interconnection framework to IP interconnection.

TEXALTEL urges that regulators stop the delay and require the ILECs to interconnect IP pursuant to existing agreements and rules (engage in IP interconnection). They can then leave it to parties to work out changes or tweaks to existing contracts that are necessary through negotiation, and to respond quickly with arbitration and/or dispute resolution as necessary. The "trial" can be considered complete when these challenges (if any) are resolved. On this point, TEXALTEL reminds the Commission that no "trial" was necessary when the initial interconnection rules were implemented beginning in 1996. Unlike then, we now have a baseline developed to make the implementation of IP interconnection easier, not harder.

As for whether a new framework should be introduced for IP interconnection, TEXALTEL argues that, with the exception of the forbearance process, the FCC does not have the authority to make a wholesale deviation from the FTA with regard to establishing interconnection between parties. Under Sections 251 and 252, Congress set forth a broad, technology neutral framework to guide regulators in crafting an interconnection model. The Texas PUC, for example, has already ruled that IP interconnection is required based on the FTA and the FCC's existing rules.[2]

National Association of Regulatory Utility Commissioners (NARUC) recently released a draft report updating its original 2005 *Cooperative Federalism and Telecom in the 21st Century*.[3] While the report mainly focuses on the roles of the state commissions and the FCC with regards to

[2] Texas Public Utility Commission, Docket 26381, Arbitration Award, page 110, 2nd full paragraph "The Arbitrators find AT&T Texas's argument that SS7, ISDN, SIP, and ATM are forms of signaling and thus not forms of interconnection to be erroneous. Signaling is part of the ILEC's responsibilities under FTA § 251(c)(2), which defines interconnection as an obligation of the ILEC to interconnect '[f]or the transmission and *routing* of telephone exchange service and exchange access.' (Emphasis added.) Furthermore, the FCC's interconnection rules state that an ILEC must allow a requesting carrier to interconnect with the ILEC's '[o]ut-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases.' Finally, the Commission decided in Docket No. 33323 that ISDN is a technically feasible form of interconnection if the CLEC switch to which it is terminated is capable of meeting all the requirements of interconnection. The arbitrators adopt the terms for ISDN interconnection consistent with the Commission's decision in Docket No. 33323.

[3] *Cooperative Federalism and Telecom in the 21st Century;* National Association of Regulatory Utility Commissioners; Draft Report (June 2013)

overseeing the continued drive toward competition in the telecommunications market, it also states the continued relevance of the Federal Telecommunications Act. In 2005, the original report found the Act itself is "technology agnostic", meaning that it orders interconnections between carriers in a non-discriminatory manner regardless of the manner of technology used.[4] As of the recently released draft of the 2013 updated report, NARUC unequivocally supports their original findings.

We note that parties advocating abandonment of existing 251/252 frameworks have yet to explain why these frameworks do not well serve IP interconnection technologies or the legality of forbearing existing obligations for a technology upgrade.

Additionally, TEXALTEL agrees with NARUC that the states continue to be the most appropriate and well positioned place for interconnection agreements and arbitrations to be conducted. State commissions have real world knowledge of the industry conditions in their jurisdictions, along with their adjudication experience that is difficult to replicate in a single federal agency. In situations where the FCC has been the arbitrator, it has not been a model of timeliness. Those who advocate "no rules" may well conclude that removing the states from the arbitration process is a victory, as the result will be "slow rules".

It is widely understood that the most effective consumer protection is a vibrant and competitive retail market that allows consumers a broad spectrum of choice. However, due to the disparate size and negotiating power of carriers, a vibrant and competitive retail market is wholly dependent upon strong, enforceable wholesale regulations. The Commission will have established a dangerous precedent that will create an uncertain wholesale market and eliminate the power of law that currently forces the larger, more powerful ILECs to the negotiation table.

[4] NARUC Legislative Task Force Report on Federalism and Telecommunications, July 2005

History shows a strong competitive environment is what truly spurs innovation and network advancements. New, flexible competitors enter the market and bring innovative technologies that push the network toward greater efficiency at lower costs and therefore, lower prices. This was the case when MCI entered the market for long distance service, it was the case when Covad Communications brought DSL service to the market in the 1990s, and it continues to be the case as competitive local exchange carriers ("CLECs") maximize the existing copper infrastructure with innovative broadband products such as Ethernet over Copper ("EoC"). Without solid assurances of law enjoyed under 251/252 today that competitors would retain access to all points on the network on a non-discriminatory basis, competitor providers cannot access capital investments necessary to grow and continue the history of innovation and development.

2. Complete Reforms before Embarking on any Trials

In its request, the Task Force lists numerous technological issues it knows must be addressed or at least reviewed including issues such as signaling, points of presence, physical points of interconnection, media formats, text and video, and quality of service among many other issues.[5]

Historically, the FCC and the states have always taken the, much more sensible, approach of addressing policy before engaging the service and that approach has served the telecommunications industry well. The entry into the local market did not occur on a whim of turning up service with the hopes that it worked. Instead the FCC crafted a detailed order on interconnection and the issues involved with opening the competitive market and then turned it over to the states to implement according to their unique needs. Interconnection agreements were hammered out, carefully examining each key policy and technical issues to determine the needs. While changes were

[5] *Task Force Related ex parte*; GN Docket No. 13-5; Technology Transitions Policy Task Force Seeks Comment on Potential Trials; (rel. May 10, 2013) pg 5

necessary over time, the system worked. Without it, the competitive communications industry that we know today simply would not exist.

It makes little sense to simply turn up service and hope it works and hope, that after the trials are over and the Task Force or the Commission is no longer watching, the ILECs will continue to negotiate and participate in a fair and reasonable manner. History has repeatedly shown that where regulations are not present, ILECs are not cooperative. TEXALTEL urges the FCC to give the proven process time to work, examine the broad policy issues and allow the states to craft interconnection agreements that address the new technological advancements before embarking on any type of trial.

3. IP Interconnection Agreements as Basis For Future Agreements

Finally, in its request for comments, the Task Force asks if an interconnection agreement reached during this process should be used as the basis for future agreements.[6] It is a "no brainer" that before IP interconnection happens, some agreement must be reached. However, one must consider the environment in which an agreement is reached. If a "no rules" approach is taken, then there may not be any agreements reached which for a basis for vibrant competition. Some commercial type agreements will likely be inked, but they may work to the strong disadvantage of smaller competitors. To simply select the "best of the bad" as a model for the future would not be wise regulation. Under current law, which TEXALTEL again argues is relevant and applicable to the IP transition, carriers are allowed to opt into interconnection agreements that are already in existence. The opt-in process allows carriers to conserve time and money and commissions to conserve resources.

[6] *Cooperative Federalism and Telecom in the 21st Century;* National Association of Regulatory Utility Commissioners; Draft Report (June 2013) (pg 6)

Conclusion

TEXALTEL again urges the Commission to move quickly and deliberately. While it is important to move ahead with speed so as not to delay the continued network evolution, it is equally important to ensure that the process is done properly to ensure a smooth transition and a continued competitive environment. First and foremost, the Task Force must address outstanding policy issues including requiring the ILECs to proceed without haste to develop IP interconnection agreements based on the existing 251/252 framework.

TEXALTEL thanks the Commission and the Task Force for the opportunity to provide comments in this proceeding.

Respectfully submitted,

TEXALTEL

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